



COUNTY OF LOS ANGELES
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January 31, 2006

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SUPERVISOR DON KNABE

FROM: RAYMOND G. FORTNER, JR.
County Counsel

RE: **Update on BlackBerry Litigation**

As you are aware, the maker of BlackBerry devices, Research in Motion ("RIM"), has been sued by NTP, Incorporated for patent infringement in the making of the devices. Enclosed is a copy of our earlier memorandum regarding that litigation.

On January 23, 2006, the United States Supreme Court rejected a request by RIM to hear its appeal over the lower court's decision that RIM had infringed on the patents held by NTP.

On January 17, 2006, NTP filed a motion in the federal court, requesting that an injunction be issued preventing the sale or use of BlackBerry devices in the United States. This motion is set for a hearing on February 24, 2006. My office has reviewed the proposed injunction and confirmed that it specifically exempts federal, state and local governments, as well as first responders (including the Red Cross, law enforcement, fire departments and other emergency services). The proposed injunction also provides for a 30-day stay as to existing non-government BlackBerry users, to enable those non-government users who rely on BlackBerry service to transition to alternative solutions.

My office has also been in contact with the United States Department of Justice ("DOJ"), which has submitted prior pleadings in this matter. The DOJ has expressed concern regarding the method by which an

injunction would be implemented. Specifically, the DOJ questions how government BlackBerry users would be distinguished from non-government BlackBerry users. On February 1, 2006, the DOJ is expected to file a pleading, in which it will request that any injunction be stayed for 90 days, to enable RIM and NTP to identify government BlackBerry users, in order to prevent any disruption of government BlackBerry service.

Many observers continue to believe that the most probable outcome is a settlement, which could be reached prior to the February 24, 2006, court hearing. Should such a settlement be reached prior to February 24, 2006, BlackBerry service would continue for all users, although BlackBerry device and service costs may increase.

My office will provide a further update should a settlement be reached, should the federal judge rule on the injunction, or should other noteworthy developments occur.

If you have any questions concerning this matter, please contact me or Deputy County Counsel Richard Bloom at (213) 974-1844.

RGF:RDB:ma

Enclosure

c:

David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

Jon W. Fullinwider
Chief Information Officer



COUNTY OF LOS ANGELES

CHIEF INFORMATION OFFICE

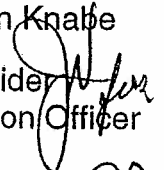
500 West Temple Street
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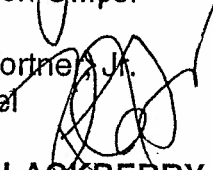
JON W. FULLINWIDER
CHIEF INFORMATION OFFICER

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November 29, 2005

To: Supervisor Gloria Molina, Chair
Supervisor Michael D. Antonovich, Chair Pro Tem
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: Jon W. Fullinwider 
Chief Information Officer

Raymond G. Fortner Jr. 
County Counsel

Subject: **REVIEW OF BLACKBERRY INJUNCTION'S IMPACT ON LA COUNTY**

This memorandum is in response to a November 15, 2005 motion by your Board, instructing the County Counsel and the Chief Information Officer to report back on the potential adverse impacts that the ongoing patent dispute regarding Blackberry technologies may have on the County and other governmental agencies. We were also asked to assess the scope of the potential exemption from the injunction.

Our offices have obtained the recent court filings for *NTP, Inc. v. Research in Motion, Ltd. (RIM)* and have conferred with Gartner, Inc., a worldwide information technology (I/T) research and advisory company. The table below summarizes our findings based on the three likely outcomes of the case: (1) Injunction – RIM forced to stop manufacturing and selling BlackBerry devices and cease service to customers, with the court likely awarding damages to NTP, which may include ongoing royalties should federal, state and local governments, as well as first responders, be exempt from the injunction (as discussed below); (2) No Injunction – RIM continues to manufacture and sell BlackBerry devices and provide service, with the court likely awarding damages to NTP, which may include ongoing royalties; and (3) Settlement – RIM and NTP settle, with a likely payment of a license fee and/or royalties to NTP, or the court may find legally binding a reported March 2005 settlement (announced by RIM, but later denied by NTP) that purportedly would give RIM a perpetual license to the NTP patents in exchange for a one-time payment of \$450 million.

Should an injunction be issued, it is expected that an exemption would be included which would extend to all government entities, including the County. Specifically, NTP has stated that it would propose an injunction with exemptions for federal, state, and

local governments, as well as first responders, although it is unclear whether the exemption would extend to government contractors. Even with an exemption for government users, however, the United States Department of Justice (DOJ) has expressed concern that immediate enforcement of an injunction would likely disrupt BlackBerry service for government agencies, since RIM does not have the present ability to distinguish government BlackBerry users from non-government BlackBerry users. Therefore, the DOJ has filed a "Statement of Interest," in which it seeks 90 days' notice before the court enforces any injunction. The 90 days sought by the DOJ would enable RIM to first create a list of government BlackBerry users who would be subject to the exemption. NTP has filed a response with the Court, suggesting that the list identifying government BlackBerry users could be created more expeditiously at the carrier level (e.g., Verizon Wireless, Cingular Wireless), rather than at the RIM level.

RIM has also claimed, without any details, that it has developed a "workaround," which is described as a software upgrade with alternative technology that would not infringe NTP's patents. The workaround may allow RIM to avoid paying ongoing royalty payments to NTP. However, NTP may dispute that the workaround does not infringe its patents, hence continuing the legal battle.

Table 1. Summary of Impact to County, by Case Outcome

Case Outcome	County Service	Contractor Service	RIM Workaround	Cost Increase
Injunction	No interruption in RIM service to County is expected, provided that a list identifying government BlackBerry users is created prior to enforcement of the injunction; otherwise, disruption to County service could occur until creation of such a list.	Potential interruption in RIM service to County contractors is expected, if exemption does not extend to government contractors.	Expected to require rollout of software upgrade to all devices and/or desktop/server redirectors.	County may experience a cost increase, especially in the long-term.
No Injunction	No interruption in RIM service to County is expected.	No interruption in RIM service to County contractors is expected.	Expected to require rollout of software upgrade to all devices and/or desktop/server redirectors.	County may experience a cost increase, especially in the long-term.
Settlement	No interruption in RIM service to County is expected.	No interruption in RIM service to County contractors is expected.	Expected to require rollout of software upgrade to all devices and/or desktop/server redirectors.	County may experience a cost increase, especially in the long-term.

Many observers believe that a settlement is the most probable outcome. In a Court order dated November 11, 2005, the Judge directed NTP and RIM to address issues relating to the alleged settlement agreement. The financial impact to the County will depend upon the damages awarded by the court, and any ongoing royalties to be paid by RIM. RIM may pass along any increase in its costs as a result of damages and ongoing royalties to the carriers, which may in turn pass them onto customers such as the County. It is not expected that existing service contracts would be affected. But, new BlackBerry device purchases, along with the requisite services and service contracts, may reflect higher costs. In general, then, County departments that continue to use BlackBerry devices may need to plan for higher procurement and operational costs in the long-term, should a settlement be reached, or should the court find in favor of NTP.

It is further worth noting that the five patents involved in the lawsuit are all undergoing reexamination by the United States Patent and Trademark Office (PTO). Any final ruling by the PTO, which could invalidate any or all of the patents in dispute, could affect the outcome of the proceedings, and any resulting damages and royalties paid by RIM.

While there is no need to switch from BlackBerry devices at the present time, strategically, departments should consider alternatives, especially the Windows Mobile platform for in-house and 3rd-party mobile application support. This is in alignment with the County I/T Strategic Direction and preferred standards, and is a recommended strategy for consideration by Gartner.

Should you have any questions, please contact Jonathan Williams, Chief Deputy CIO, at (213) 974-2008 or Richard Bloom, Deputy County Counsel, at (213) 974-1844.

JWF:JW:
DH:RB:sjc

c: Chair, Information Systems Commission
I/T Board Deputies
I/T Managers
Elizabeth Cortez, Assistant County Counsel